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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 010628.50474C3

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Application Number	Filed
10/752,709	January 8, 2004

First Named Inventor: John H. HAYES

Art Unit	Examiner
3673	Fredrick C. Conley

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 32,169

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

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July 25, 2005
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

The final Office Action dated February 24, 2005 rejected claims 1-3 as being obvious over Tokunaga et al. (US 5,077,845) in view of Parker (US 4,011,610). This rejection is being appealed and a pre-appeal review is requested.

To aid the review, Applicant reproduces below claim 1, in which the italicized portions are the subject of the pre-appeal review.

1. A mattress system, comprising:

a mattress having a top surface and a bottom surface;

a cavity arranged in the mattress, the cavity being open at least toward the top surface and having a defined size;

an expandable cushion arranged in the cavity;

a *mattress protector covering at least the top surface* of the mattress, the protector *including a first portion that extends into the cavity* and a second portion that extends over the expandable cushion arranged in the cavity; and a control system operatively coupled with the cushion to control an expansion and contraction of the cushion, wherein the control system includes a fluidic pump arranged to pump fluid into the expandable cushion, *a fluid relief mechanism arranged to allow fluid to escape the expandable cushion, a fluid pressure reservoir for maintaining a relatively constant pressure in the fluidic system, and a fluid pressure switch operable to automatically activate and deactivate the fluidic pump to maintain a defined pressure level* in the expandable cushion.

As described in the preferred embodiments, the mattress protector 20 has a first portion 25, 26 that extends into the cavity 17 (see paragraph 39 and Figures 5a and 5b). A second portion of the mattress protector extends over the expandable cushion arranged in the cavity. The claimed control system, in addition to a fluidic pump and relief mechanism, includes a fluid pressure reservoir for maintaining a relatively constant pressure in the fluidic system, and a fluid pressure switch operable to automatically activate and deactivate the

fluidic pump to maintain a defined pressure level in the expandable cushion. As disclosed with respect to Applicant's Figure 14, for example, the pressure switch can maintain the defined pressure level by turning the pump on and off at a predetermined pressure setting. And, the pressure reservoir maintains a relatively constant pressure in the system such that the pump does not frequently cycle on and off (paragraph 46; page 14, lines 1-5).

These components – the pressure reservoir and pressure switch – advantageously allow the expandable cushion to be adjusted in accordance with the weight of the user so as to provide substantially the same level of support as that of the surrounding conventional mattress material (page 14, lines 5-9). For example, a heavy user resting on the mattress 14 causes its coils to contract whereas the air cushion, without Applicant's claimed features, would maintain an expanded state under increased pressure. To avoid this problem, Applicant's pressure reservoir, pressure switch and relief mechanism operate together to bleed-off the increased air pressure in order to maintain the pressure in the cushion at a defined level (page. 14, lines 10-18).

Applicant submits the rejection of claim 1 based on Tokunaga and Parker is improper due to clear factual error, as well as a failure to provide the necessary motivation to combine the references in the manner fashioned by the Examiner.

Regarding the primary Tokunaga reference, the final Office Action recognized that Tokunaga does not disclose a portion of a mattress protector that extends into a cavity arranged in the mattress. The Examiner relied on the sheet 29 provided to cover the opening formed in the mattress 4 as Applicant's

claimed "mattress protector covering at least the top surface of the mattress". As clearly seen in Figures 1 and 10a-10c, however, cover sheet 29 only covers the opening and is not a "mattress protector" for "covering at least the top surface of the mattress". In Applicant's embodiments, for example, Figures 3-5b show a mattress protector 20 that covers the top surface of the mattress.

The Advisory Action issued July 11, 2005 argues that sheet 29 "is clearly attached to a top surface of the mattress 4 as shown in Figure 10c". The Examiner then states that the sheet 29 "inherently covers a top surface of the mattress that lies between the opening 5 and the attachment of the cover sheet". Such an argument ignores the specification of which Applicant's claims are a part, as well as the plain meaning of a "mattress protector" recited in claim 1. Applicant thus, as an initial matter, submits it is a clear factual error to find that Tokunaga has a "mattress protector covering at least the top surface of the mattress". Indeed, Figure 1 of Tokunaga does not show the sheet "covering a top surface" even under the "inherent" argument made by the Examiner.

Secondly, and more importantly, Applicant's mattress protector includes a first portion that extends into the cavity. The final Office Action recognized that Tokunaga fails to disclose a mattress protector having a portion extending into the cavity. Without any motivation, the Examiner then attempts to combine Parker with Tokunaga. Applicant submits this is improper.

In particular, while Parker does disclose a sheet 38 having a cuffed portion 40 that extends into a cavity, one skilled in the art would not incorporate such a cuffed portion with the sheet 29 used in Tokunaga.

Tokunaga is directed toward a bed having a built-in toilet. The cover sheet 29 is provided to cover only the opening (when the toilet is not used) or the anal and urinary portions of the patient 9 (see Figs. 10a-10c; col. 4, lines 38-43). Tokunaga does not have any sheet that extends into the cavity since the cavity is designed as a toilet into which the patient defecates. Extending sheet 29 into the cavity as fashioned by the Examiner, based on Parker, would result in the patient soiling the sheet every time the toilet is used. This, of course, would be extremely wasteful in that it would require the cover sheet to be changed with every usage, thus defeating the purpose of Tokunaga's combined mattress/toilet system. Accordingly, Tokunaga's built-in toilet – which uses easily cleanable rubber support pads 7a-7d (see col. 6, lines 3-6) – effectively leads those of skill in the art away from using a mattress protector that would extend into the toilet.

Applicant respectfully submits the combination of Tokunaga in view of Parker is improper. Indeed, the reason stated in the final Office Action, i.e., "in order to fully cover [the] height of the aperture of Tokunaga" finds no support or suggestion in the prior art. The greater the height covered then the greater the likelihood that the mattress protector would be soiled after each usage. Thus, one skilled in the art would not seek to make such a combination.

Moreover, the additional reasoning provided in the Advisory Action, that the "combination of references as a whole would provide a sheet that covers the top and perimeter portions of the opening in order to protect the mattress from being soiled while by a patient" is nothing but a hindsight attempt to reconstruct Applicant's invention, while being contrary to the teachings of Tokunaga. Simply put, as shown in Figure 1 of Tokunaga, the patient 9 would not add a

sheet that extends into the commode 6 since the patient would soil it with each usage.

It should be pointed out that Applicant's invention avoids this problem since it uses a bedpan/waste container that is inserted and removed from the opening, rather than having the opening itself serve as the toilet as in Tokunaga. Accordingly, Applicant submits the combination of Tokunaga and Parker is improper.

Finally, Applicant's claimed recites the use of a pressure reservoir and pressure switch as part of the control system. In the final Office Action, the Examiner refers only generally to col. 6, lines 50-60 of Tokunaga et al. to meet these specific limitations. However, that passage describes merely a control having an air supply and discharge device generally referred to at 10. Element 10a in Tokunaga is an air compressor and element 10b is an air suction vacuum pump (col. 4, lines 64-67). There is no disclosure in Tokunaga of a pressure reservoir for maintaining a relatively constant pressure in the fluid system and/or a fluid pressure switch operable to automatically and activate and deactivate the fluid pump to maintain a defined pressure level in the expandable cushion. Nor are these features disclosed in Parker. Accordingly, Applicant submits the rejection is improper for failing to meet these claim limitations, even if such a combination could properly be made.

In view of the above, Applicant requests pre-appeal review and an allowance of the present claims.

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